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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DONNA J. WOJCZYNSKI,

        Plaintiff,   Civ. No. 11-3080-CL

                              TEMPORARY RESTRAINING ORDER

  v.

THE BANK OF NEW YORK MELLON
and RECONTRUST COMPANY NY,

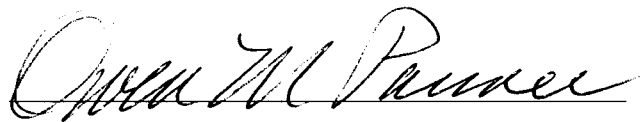   Defendants.

_____

PANNER, J.

    Plaintiff seeks an ex parte temporary restraining order to enjoin the foreclosure sale of her house. Plaintiff alleges the house is scheduled for a foreclosure sale on August 22, 2011 and defendants have not complied with the legal requirements for a valid non-judicial foreclosure. Specifically, plaintiff alleges defendants failed to record all assignments of the trust deed in the county land records prior to initiating the foreclosure proceedings. In Oregon, a party initiating non-judicial foreclosure proceedings must record all assignments of the trust

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deed. ORS 86.735(1); <u>Hooker v. Northwest Trustee Services, Inc.</u>, 2011 WL 2119103, *3 (D. Or. May 25) (citing <u>Burgett v. MERS</u>, 2010 WL 4282105, at *2 (D. Or. Oct. 20) and <u>In re McCoy</u>, 2011 WL 477820, at *3-4 (Bankr. D. Or. Feb. 7)). Plaintiff alleges MERS is listed as the beneficiary on the deed of trust at issue. (Compl. Ex. A, 2.)

Because of the alleged imminent foreclosure sale, and because the presence of MERS demonstrates a high probability that defendants did not comply with the recording requirements of the Oregon Trust Deed Act, I grant plaintiff's request for a temporary restraining order (#3). Defendants, and their officers, agents, etc..., and other persons in active concert or participation with defendants, who receive actual notice of this order, are restrained from conducting a foreclosure sale for the following property: 140 Esther Way, Central Point, Oregon, from this day until Wednesday, August 31, 2011, at 5:00 p.m. This court will hold a hearing on whether to issue a preliminary injunction at 9:30 a.m. on August 31, 2011, in the James A. Redden Courthouse in Medford.

IT IS SO ORDERED.

DATED this ___18___ day of August, 2011.

OWEN M. PANNER
U.S. DISTRICT JUDGE

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